



Victorian Commission for Gambling and Liquor Regulation

REASONS FOR DECISION

In the matter of an application by PJ Cook Investments Pty Ltd under section 3.3.4(1) of the *Gambling Regulation Act 2003* for approval of the premises, the Fyansford Hotel, 67 Hyland Street, Fyansford, Geelong as suitable for gaming with forty (40) Electronic Gaming Machines.

Commission:

Mr Bruce Thompson, Deputy Chair
Mr Des Powell, Commissioner

Appearances:

Ms Sarah Porritt of Counsel for the Applicant
(instructed by Bazzani Scully Brand)

Mr John Rantino of Maddocks Lawyers for the City of
Greater Geelong

Mr Bronte Campbell as Counsel Assisting the Commission

Decision:

That the application be granted

Signed:

Bruce Thompson
Deputy Chair



REASONS FOR DECISION

BACKGROUND

1. This is an application by PJ Cook Investments Pty Ltd (**Applicant**) for the approval of the Fyansford Hotel at 67 Hyland Street, Fyansford, Geelong (**Premises**) as suitable for gaming with 40 Electronic Gaming Machines (**EGMs**).
2. The Applicant is a company within the Cook, Beaumont and Partners Group (the Group) and has entered into a contract of sale to purchase the Premises. Completion of the contract of sale is contingent on approval of this application.
3. The relevant municipal council in respect of this application is the City of Greater Geelong (**Council**). On 17 April 2012, the Council provided the Commission and Applicant with a written submission in opposition of the application. The Council was also represented at the hearing.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. Determination of this application is governed by section 3.3.8(1) of the *Gambling Regulation Act 2003* (**the Act**) which states that the Commission must determine an application by either granting or refusing a premises as suitable for gambling.
5. The Act recognises that, notwithstanding individual rights of self-determination and gaming's recreational legitimacy, gaming on EGMs causes harm to some communities and some members of some communities.¹ It is for this reason that the Act includes safeguards to ensure that an appropriate balance is struck between a lawful and legitimate recreational activity for some and harm for others.
6. An applicant must satisfy the Commission of the "no net detriment test" and the other matters set out in section 3.3.7 of the Act.²

"(1) The Commission must not grant an application for approval of premises as suitable for gaming unless satisfied that –

- (a) the Applicant has authority to make the application in respect of the premises; and

¹ See: s 1.1(2) of the Act.

² See: *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [247] (Bell J).



- (b) the premises are or, on the completion of building works will be, suitable for the management and operation of gaming machines; and
 - (c) the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located.
 - (2) In particular, the Commission must consider whether the size, layout and facilities of the premises are or will be suitable.
 - (3) The Commission must also consider any submission made by the relevant responsible authority under section 3.3.6.”
7. The no net detriment test requires the Commission to weigh the likely positive economic and social impacts of an application against the likely negative economic and social impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.³
8. Evidence of the community's attitude to an application is a relevant consideration for the Commission in weighing the competing impacts as part of the no net detriment test.⁴
9. Further, section 3.3.6 of the Act allows the Council to make a submission addressing the economic and social impact of the proposal on the well-being of the community and taking into account the impact of the proposal on surrounding municipal districts. The Commission is bound to take this submission into consideration when applying the no net detriment test: section 3.3.7(3). This recognises the special role of local government in representing the people of a community.⁵

THE FYANSFORD HOTEL AND THE CITY OF GEELONG

10. Information and data was provided by officers of the Commission to assist the inquiry. The Commission's report identified the City of Greater Geelong (**Geelong LGA**) as a regional centre located approximately 75 kilometres south-west Melbourne. The Geelong LGA is made up of eight statistical local areas⁶ (**SLA**) and includes the major town centres of Geelong,

³ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, 435 (“Romsey”).

⁴ *Romsey* (2008) 19 VR 422, 434.

⁵ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [247] [249].

⁶ A group of one or more *Census Collection Districts*



Ocean Grove, Lara and Leopold. The Geelong LGA has an adult population of 170,846 and has the highest population of the 13 regional municipalities in Victoria.

11. At the time of the hearing, there were 1,313 EGMs operating in 25 gaming venues in the Geelong LGA. In 2011, the Commission approved an additional 14 EGMs at the Waurn Ponds Hotel and an additional 20 EGMs at the Lara Hotel, also in the Geelong LGA. Those approvals were yet to be implemented by the venues at the time of the hearing. Subsequently, the Lara Hotel has installed a further 20 gaming machines.
12. The Geelong LGA, together with the Borough of Queenscliffe, is subject to a regional cap of 1,421 EGMs. Assuming the outstanding approval for the Waurn Ponds Hotel will be implemented in due course, there will be 1,397 EGMs within the Geelong LGA and Borough of Queenscliffe, 24 fewer than the regional cap. Accordingly, the Commission has assessed this application on the basis that, of the 40 EGMs the Applicant seeks, a maximum of 24 EGMs will be new to the region and at least 16 EGMs will be transferred from other venues within the municipality.
13. In terms of gaming statistics, the Geelong LGA has 1% fewer EGMs per 1,000 adults compared with the regional average and 24% more than the Victorian average. The Geelong LGA is ranked 7th lowest in terms of EGM density of the 13 regional municipalities with EGMs. Expenditure on EGMs within the Geelong LGA was \$116,546,927 for the 2010-11 financial year or \$682 per adult. Gaming expenditure within the Geelong LGA has decreased by 8.92% in real terms (indexed to inflation) over the past five years.
14. If the approvals at the Waurn Ponds Hotel and the Lara Hotel are counted, the Geelong LGA has 1% more EGMs per 1,000 adults compared with the regional average and 28% more than the Victorian average. Expenditure on EGMs within the Geelong LGA is predicted to increase to \$117,104,471 or \$685 per adult as a result of these two applications.
15. The Premises is located within the Corio – Inner SLA (**Corio**) and lies approximately 4 kilometres from the Geelong CBD. Corio currently has 7 gaming venues within it and 352 EGMs. The Great Western Hotel with 36 EGMs will be the closest gaming venue, located approximately 2 kilometres away, within the Newtown SLA.



16. The Premises is located in close proximity to the proposed Fyansford Green residential development. The development is expected to bring between 1500 – 2000 residential properties into the Fyansford area. At the time of the hearing of the application, the Fyansford Green development had stalled due to the financial position of the developer and soil contamination on the site. While the future of the Fyansford Green development is uncertain, the Commission proceeded on the basis that the development would be completed at some stage in the future.
17. In terms of socioeconomic factors, Corio is ranked 37th of the 41 regional SLAs in Victoria on the Social and Economic Index for Areas (**SEIFA**) for Disadvantage indicating the SLA shows strong signs of relative disadvantage.
18. Notably, when the Corio SLA is broken down into Census Collection Districts (**CCD**), the material before the Commission showed that the Premises is located in a CCD that is in the lowest Victorian quintile of disadvantage. However, it is important to note that immediately east and south of the Premises, there are a number of CCDs that exhibit considerably fewer signs of disadvantage.
19. The immediate area surrounding the Premises is sparsely populated, and accordingly it has not been considered as the primary catchment area.
20. The Commission accepts that while the Premises may be located in an area that shows significant signs of relative disadvantage, there are mixed levels of disadvantage in a 5km radial area from where the Premises' patrons can be expected to be drawn.

THE MATERIAL BEFORE THE COMMISSION

21. The Applicant filed with the Commission extensive material in support of its application, including:
 - a) a copy of the liquor licence for the Premises, Licence No. 31905813;
 - b) written consent of the current owner of the Premises to make this application dated 9 December 2011;
 - c) an application for a Planning Permit dated 10 February 2012;



- d) a Social and Economic Impact Assessment, prepared by Urbis Pty Ltd dated February 2012 and addendum report;
 - e) an Expenditure Report prepared by Progressive Venue Services (PVS) dated February 2012 and addendum report;
 - f) a Witness Statement of Richard Davis dated February 2012;
 - g) a Witness Statement of Peter John Cook dated February 2012; and
 - h) a Witness Statement of Philip Calwell dated May 2012 and an attached Community Perceptions Survey.
22. In opposition to the application, the Council filed a Social and Economic Impact Assessment Report prepared by Capire Consulting Group Pty Ltd dated February 2012.
23. A statistical report prepared by Commission officers, titled Economic and Social Impact Report, dated April 2012 was also considered by the Commission.
24. The Commission also received submissions in opposition to this application from members of the local community. Principally those submissions opposed the introduction of gaming into the Fyansford area and any increase in the number of EGMs within the municipality.

Evidence of likely expenditure

25. Mr Richard Whitehouse, a director of PVS, appeared before the Commission to give evidence and was cross-examined.
26. PVS uses the Geotech Model to estimate likely EGM expenditure in gaming venues. The Geotech Model is a geo-spatial predictive model which considers elements such as the convenience of a venue, its attractiveness and the expenditure statistics for the relevant area.
27. Mr Whitehouse gave evidence that the Geotech model predicted that, should the application be approved, the annual expenditure on the 40 EGMs to be installed in the Premises will be approximately \$1,552,302 of which 84.6% would be transferred from other venues. In terms of an actual increase in expenditure within the municipality, the Geotech model predicted that expenditure within the Geelong LGA would increase by \$238,263 in the first year of operation.



28. Mr Whitehouse told the Commission that, as this application deals with a new gaming venue and there are no actual gaming performance figures available for the venue, it is normal to allow for an upper bound confidence level of 75%. Mr Whitehouse told the Commission that, in effect, this means that prediction is adjusted so that there is a greater than 75% chance that the model's output will be equal to or above the actual performance of the EGMs once installed. Mr Whitehouse's adjusted figures predict the expenditure at the venue on the 40 EGMs to be installed to be approximately \$1,738,578 with a net increase within the municipality of \$267,258 after a transferred expenditure rate of 84.6% is applied.
29. Mr Whitehouse gave evidence that the Premises is isolated from other venues within the municipality and would struggle to attract customers away from venues that are located closer to the Geelong CBD. Mr Whitehouse also gave evidence that the Premises is located within an immediate area with a small population that was expected to grow considerably once the Fyansford Green development was completed. Accordingly, in Mr Whitehouse's opinion, it is appropriate to discount the model's predicted transfer rate of 84.6% to 75% to allow for the isolation of the Premises from other venues and anticipated population growth in the immediate area.
30. Therefore, with the reduction applied to the model's predicted transfer rate, it can be expected that expenditure within the municipality will increase by approximately \$434,645 after the first 12 months of operation.
31. Mr Whitehouse also gave evidence that the municipality could expect to see a reduction in gaming expenditure as a result of the outcome of the 2010 EGM Entitlement Auction where a number of venues within the municipality purchased fewer entitlements than the number of EGMs currently in operation.
32. Mr Whitehouse told the Commission the prediction did not take into account the anticipated reduction in trade that would occur once the restrictions on ATM facilities in gaming venues came into effect, nor did it take into account the implantation of any federal or state pre-commitment legislation.
33. The Commission accepts Mr Whitehouse's expenditure prediction as reasonable.



Evidence of Mr Cook

34. Mr Cook provided a witness statement and gave evidence at the hearing of the application and was cross-examined. Mr Cook is the director of the Applicant and the joint Managing Director of the Group. The Group operates 28 hospitality venues across Australia, 8 of which contain EGMs. In recent times, the Group has made applications to the Commission for approval of premises for gaming in a number of their Victorian venues.

35. Mr Cook gave evidence that the Group purchased 40 EGM entitlements at the 2010 EGM Entitlement Auction and identified the Premises as a venue that the Group could redevelop and introduce gaming. In Mr Cook's opinion, the Premises is located in a unique and picturesque setting but has, in recent times, fallen into disrepair and is behind modern day standards for such a facility.

36. Mr Cook told the Commission the purchase of the venue by the Group was contingent on planning, heritage and gaming approvals. Mr Cook gave evidence that the Group wanted to redevelop the venue to be a destination venue whereby patrons will take day trips to the venue on weekends and holidays to enjoy the full range of facilities on offer. The Group proposes to develop the venue into a rounded entertainment venue that focuses on food and beverage and also offers gaming, function and boutique accommodation facilities.

37. Mr Cook gave evidence that, in addition to the Group's hospitality business, the Group operates its own construction company. This enables the group to undertake large-scale renovations more efficiently and without a margin on costs. Should this application be approved, the Applicant will redevelop the venue to provide:
 - a) a 250 seat bistro and deck area, with function capabilities;
 - b) four 4-star boutique accommodation suites;
 - c) a children's playground (which is not adjacent to the gaming machine area);
 - d) a sports and lounge bar;
 - e) a gaming room with 40 EGMs; and
 - f) an outdoor courtyard.



38. Mr Cook estimates that the total cost to the Group for the works will be in excess of \$1,000,000, however if the works were to be completed by an external construction company, the works would be likely to cost between \$1,200,000 and \$1,500,000. Mr Cook gave evidence that the Group will use local tradespersons and sub-contractors for approximately 70% of the construction works.
39. In addition to the proposed renovation works, the Applicant proposes to provide \$40,000 per annum (indexed to the Consumer Price Index) in financial contributions for the benefit of the local community.
40. Mr Cook gave evidence that he had been in discussions with the Council as to how the financial contributions would be distributed to community groups should the application be granted. Mr Cook told the Commission that those discussions had been positive and both the Applicant and Council were of the view that the contributions should be distributed in a way that they would have the greatest benefit to the community. Mr Cook told the Commission no formal procedure had been agreed on, but he envisaged that representatives from the Council and Applicant would come together twice a year to determine to which community groups or initiatives the contributions will be distributed.
41. Mr Cook also told the Commission the Group prides itself on running venues with a community focus that support local community and sporting groups. Mr Cook confirmed that the Applicant would, at a minimum, continue any support currently provided by the venue to community and sporting groups in addition to the cash contributions.

Evidence of Mr Davis

42. Mr Davis provided a witness statement and gave evidence at the hearing of the application and was cross-examined. Mr Davis holds the position of Operations Manager within the Group and oversees the management of individual venues in the Group's portfolio. Mr Davis is also responsible for the Group's compliance with responsible service of alcohol and gambling requirements.
43. Mr Davis told the Commission that it was his role to ensure that each of the Group's venues upheld the high standard set by the Group for the responsible service of gaming and



responsible service of alcohol. Mr Davis gave evidence that the Group was committed to harm minimisation and demonstrating industry best practice in terms of gaming compliance. Mr Davis also told the Commission that the Group enlists the help of the local gamblers help organisations to ensure that staff are trained to industry best practice standard with all their gaming venues.

44. Mr Davis gave evidence that the Premises currently trades 7 days a week in the bar and bottle shop however only provides bistro facilities from Tuesday to Sunday. According to Mr Davis, the Premises currently serves patrons from the Fyansford and Geelong area but the Group believes a renovated venue with an improved entertainment offering will result in the Premises becoming a 'must visit' venue for those travelling to, and through, the Fyansford area.
45. Mr Davis told the Commission that the Applicant proposes to operate the bistro from Monday to Friday for lunch and dinner sittings and all day on Saturday and Sunday. Mr Davis gave evidence that the Applicant will introduce a new menu into the venue which will have a focus on local produce and develop an offering for seniors and children.
46. Mr Davis also gave evidence that, should the application be approved, and once the renovations to the venue are completed, an additional 9 full time jobs will be created at the venue. Mr Davis estimates that four of those staff will be positioned in the gaming room, three servicing food and beverage and two additional chefs to cater for the anticipated increase in bistro patrons. Mr Davis also told the Commission that the Group would seek to employ a full-time venue manager from the local community.

Social and Economic Impact Statement - Urbis

47. The Applicant engaged Urbis Pty Ltd (**Urbis**) to prepare a social and economic impact statement to accompany its application. Mr Rhys Quick, director of Urbis and author of the impact statement, gave evidence at the hearing of the application and was cross examined.
48. Mr Quick told the Commission that while Fyansford is often described as a 'hamlet', it is less than 5 kilometres from central Geelong and just outside the urban Geelong area. However, the area is separated from Geelong by the Moorabool River, surrounding parklands and a large escarpment in which Fyansford sits..



49. Mr Quick gave evidence that Fyansford currently consisted of the Premises, a function centre, furniture store and small number of residences but noted that the Fyansford Green development would stimulate significant growth in the area. In Mr Quick's opinion, Fyansford's unique geographical features together with the lack of development in the area, meant that Fyansford was currently a destination area where people would come to enjoy the parklands and picturesque setting.
50. In terms of the Premises itself, Mr Quick told the Commission that the Premises was built in the 1850s and has long been a significant landmark in the municipality. Currently, the venue offers a bistro with capacity for approximately 80 people, beer garden and bottle shop. Mr Quick gave evidence that the Premises once had an excellent reputation for its food but in recent years has lost that reputation and has suffered a reduction in patrons as a result.
51. In preparing his report, Mr Quick conducted a survey of bistro patrons that showed that 63% of bistro patrons came from the nearby suburbs of Fyansford, Highton, Newtown, Geelong West, Gheringhap, Belmont and Hamlyn Heights. A total of 59% of bistro patrons came from suburbs within 5 kilometres of the Premises. Mr Quick told the Commission that it was likely that the proposed renovation to the venue, together with an increase in population in the immediate area as a result of the Fyansford Green development, would result in an increase in numbers of patrons to the venue.
52. In terms of economic and social factors in the area surrounding the Premises, Mr Quick stated that Corio is one of the more disadvantaged SLAs within the municipality. Mr Quick told the Commission that the majority of Corio's population resides in the eastern and north-eastern suburbs of the SLA such as Hamlyn Heights and Norlane and those suburbs are considerably more disadvantaged compared with Fyansford.
53. Mr Quick told the Commission that, while the area surrounding the Premises shows a mixed level of disadvantage, including areas of significant disadvantage, when assessing economic and social impact, it was important to consider the levels of disadvantage in the areas from which the Premises' customers are likely to be drawn. In Mr Quick's opinion, this is particularly important in respect of this application as there is only a small population in the area that surrounds the Premises and, as such, the Premises will need to draw customers from a greater area.



54. In Mr Quick's opinion, the majority of the Premises' patrons are likely to come from the Geelong West, Newtown and South Barwon – Inner SLAs. Mr Quick based this assessment on a number of factors including the bistro patron survey and catchment area predicted by Mr Whitehouse. When compared with the SLAs from which Mr Quick predicts the majority of the Premises' customers will come, Corio presents as considerably more disadvantaged. However, Mr Quick conceded that when broken down, there are a number of suburbs within those SLAs that present as significantly disadvantaged.
55. Mr Quick gave evidence that as a result of the outcome of the 2010 EGM Entitlement Auction, the Commission could expect the Gateway Hotel, Sphinx Hotel and Shell Club to reduce their EGM numbers by a total of 26. Mr Quick told the Commission that those three venues were located in areas of the municipality with higher levels of disadvantage compared with the area surrounding the Premises. As at least 16 EGMs would need to be transferred from other venues if this application was to be approved, Mr Quick considered there to be a benefit to the municipality arising out of the transfer of machines out of disadvantaged areas to a Premises which will draw its patrons from areas of considerably less disadvantage.
56. In Mr Quick's view, the risk of an increase in problem gambling as a result of approval of this application would be very minor. Mr Quick told the Commission that this conclusion was based on the Premises' nature as a destination venue, the projected EGM expenditure and the Applicant's responsible service of gaming policies. Mr Quick noted that, at sometime in the future, there may be a considerable population growth in the area as a result of the Fyansford Green development and Council's development plan for the area. This may alter the nature of the Premises to more of a convenience venue, however, this was far from certain and would take considerable time.
57. In summary, Mr Quick noted the principal benefits of this application to be:
- a) a redeveloped venue with a broad entertainment offering and improved facilities including an expanded bistro, boutique accommodation facilities, children's playground and sports bar;
 - b) a gaming venue operated by experienced gaming operators with a strong focus on responsible service of gaming and harm minimisation;
 - c) community contributions of \$40,000 per annum (indexed to CPI) to local community groups in addition to the community support already provided by the venue;



- d) transfer of at least 16 EGMs from a disadvantaged area to a venue with an anticipated catchment area of considerably less disadvantage; and
- e) an economic stimulus effect within the region.

58. In Mr Quick's opinion, the introduction of 40 EGMs in to the Premises will have a positive economic and social impact on the community.

THE COUNCIL'S SUBMISSION

59. The Council filed a social and economic impact report prepared by Capire Consulting Group (**Capire**). The Council did not call a representative from Capire to give evidence at the hearing.
60. The Commission considers the report prepared by Capire to be well written and reasoned. Notwithstanding the quality of the Capire report, the Commission would have benefited from the calling of a witness to give evidence and respond to the oral evidence provided on behalf of the Applicant.
61. The Capire report provided detailed consideration of the Applicant's proposed redevelopment of the Premises, socioeconomic profile of the municipality and gaming statistics within the municipality and Victoria generally. The Commission does not consider it necessary to set out these matters as, on the most part, they are matters of fact already canvassed in the summary of the Applicant's evidence.
62. The Capire report established a framework to guide the assessment of economic and social impact on the municipality that would result if the application was to be approved. The framework was based on existing evidence in relation to problem gambling and previous determinations on gaming matters by the Commission, Supreme Court of Victoria and the Victorian Civil and Administrative Tribunal. The framework then broke down the assessment of the economic and social impact into five categories; Problem Gambling, Recreational and Social Opportunities, Employment, Community Funding and Community Attitudes and Perceptions.

Problem Gambling

63. The Capire report concludes that the Premises, in its current context, can be considered as a destination venue. However, the report raises concerns that in the future due to the Fyansford Green development, and the Council's development plan, the Premises will be decreasingly



characterised as a destination venue due to its anticipated close proximity to retail and residential areas.

64. The Capire report notes that while the anticipated catchment area for the Premises as a whole exhibits an average level of disadvantage, the catchment area includes the suburbs of Hamlyn Heights and Herne Hill which are among the most disadvantaged suburbs within the municipality. Further, the Capire report notes these suburbs have a higher proportion of low income households than other suburbs within the catchment area. According to Capire, statistical data from community gambling help services show that there is a higher prevalence of problem gaming in areas with low income households.
65. Overall, the Capire is of the view that that introduction of EGMs into the venue would not have a significant impact on problem gaming within the venue's proposed catchment area as a whole. However, Capire considers the accessibility of the venue to the suburbs of Hamlyn Heights and Herne Hill will increase the incidence of problem gaming in those suburbs.

Recreational and Social Opportunities

66. Capire considers that redevelopment of the venue will not provide any new facilities or services and only improve the quality and scale of the current operations. Accordingly, Capire concludes that there will be only a modest social benefit arising out of the redevelopment of the Premises.
67. In Capire's view, the recreational and social benefits arising out of the provision of EGMs in the Premises are negligible noting that the Geelong municipality has ready access to EGMs and that the venue's anticipated catchment area has access to EGMs.
68. Capire considers there to be a lack of access to alternative venues or activities that do not include EGMs within the venue's anticipated catchment area. Capire notes that, currently, the Premises is the only venue without EGMs that is easily accessible to the suburbs of Herne Hill and Hamlyn Heights. In Capire's view, approval of this application will impact on the ability of vulnerable members of the community accessing social and recreational activities that do not incorporate gambling.



Employment

69. Capire notes that, while additional employment arising out of the Applicant's proposal may be seen as a benefit, research suggests that those employed in gaming venues are more likely to develop problem gambling issues than those employed in non-gaming venues. Capire also notes that a considerable portion of the renovation works will be undertaken by the Applicant, or a company associated with the Applicant, and will therefore have less employment benefit for the local community compared with renovations undertaken by an external and local building company.
70. Capire concludes that, should this application be granted, there will be a modest economic and social benefit to the local community arising out of increased or ongoing employment at the Premises.

Community Funding

71. Capire notes that the Applicant's proposed \$40,000 in financial contributions (indexed to CPI) equates to 2.6% of annual player losses on EGMs predicted for the venue and 13% of problem gaming related player losses. Capire also notes that research indicates, on average, 2.4% of player losses are redirected into community benefits by gaming venues. Accordingly, Capire concludes that the proposed community funding to be provided by the Applicant is in-line with the Victorian average.
72. In Capire's opinion, there would be a significant benefit to the community if the financial contributions were directed towards community programs and services, rather than to improving or maintaining the aesthetics of the area surrounding the Premises. Capire suggests the greatest benefit would be derived from the financial contributions if they were focused on community programs in the disadvantaged areas of the Premises' anticipated catchment area, such as Herne Hill and parts of Hamlyn Heights.

Community Attitudes and Perceptions

73. In preparing their report, Capire engaged Wallis Consulting to conduct a survey of community attitudes and perceptions regarding the proposed redevelopment of the Premises and



introduction of EGMs into the venue. The results of that survey are canvassed later in these Reasons for Decision.

Conclusion

74. Capire concludes that, should this application be granted, the impact of the proposed redevelopment to the Premises and introduction of EGMs will be detrimental to the local community. Capire notes that there are positive benefits of the proposal, including the financial contributions to be directed to the community and the creation of additional employment positions. However, Capire considers those benefits are outweighed by the negative impacts associated with the proposal and in particular, the potential for the granting of this application to increase the incidence of problem gaming in the local community.
75. Capire also expresses concern regarding the uncertainty of the future character of the venue once the Fyansford Green development is completed and the Council's development plan realised. Capire considers the Council's development plan, which encourages retail growth in the area, has the potential to transform the venue from a destination venue to a convenience venue which is likely to increase the incidence of problem gaming in the area surrounding the Premises.
76. While Capire concludes that the proposal, in its current form, would be detrimental to the local community, Capire considers there are a number of actions the Applicant could take to mitigate against the negative impacts of the application. Those actions include:
- a) The Applicant providing at least 50% of the proposed community contributions to fund additional gambling help services to mitigate against the potential increase in problem gaming in the area;
 - b) The Applicant entering into agreement with the local gambling area help service to allow access to the venue for gambling counsellors to provide on-site support and identification of problem gamers; and
 - c) A 'sunset clause' be imposed on the approval of the application whereby the character of the venue is reassessed in the context of its future surroundings at a later point in time.
77. In Capire's opinion, if the above actions were taken, the net economic and social impact of the proposal on the local community would be mildly positive.



COMMUNITY PERCEPTION SURVEYS

78. Both the Applicant and Council engaged external consultants to conduct community perception surveys and produce reports to accompany their submissions. The Applicant engaged IPSOS Australia Pty Ltd (**IPSOS**). Mr Neil Calwell, an employee of IPSOS and convenor of the survey, gave evidence at the hearing and was cross examined. The Council, through Capire Consulting Group, engaged Wallis Consulting Group to conduct a similar survey, however no witness was called to give evidence.
79. The IPSOS survey conducted 300 adult (aged 18 year or older) telephone interviews across Fyansford, Batesford, Ceres, Hamlyn Heights and Herne Hill. The data was weighted to represent age and gender profiles.
80. Respondents were given an overview of the development before the survey began.
81. 72% of respondents opposed the introduction of a gaming lounge. These respondents were then told that the redevelopment of the hotel was dependent on the approval of 40 EGMs, and asked if this changed their view. 77% of these respondents did not change their view. Those that still opposed the application were then told that the applicant would make a financial contribution of \$40,000 per annum for the next ten years to the local community and asked if this changed their view. 81% of respondents did not change their view.
82. IPSOS then counted all those who changed their view after being provided with further information. Overall opposition to the proposal was 45%, and overall support was 32%. 23% of respondents neither opposed nor supported the application.
83. Capire commissioned the Wallis Group (**Wallis**) to conduct a telephone survey for the Council's submission. Wallis interviewed 400 respondents aged 18 years or over across Fyansford, Batesford, Ceres, Hamlyn Heights, Highton, Geelong West, Manifold Heights, Newtown and Herne Hill.
84. 54% of respondents supported the redevelopment of the Fyansford Hotel. When told the development was dependent on the approval of 40 EGMs, 44% of respondents supported the proposal. Wallis concluded the community would rather see the development proceed without EGMs, but 44% of respondents still supported the proposal with EGMs. The majority of respondents did not believe their level of wellbeing or happiness would change if the redevelopment proceeds.



85. Overall, the results of the surveys were similar. There was clear support for the redevelopment of the Premises and a general level of opposition to the introduction of EGMs. When respondents were asked to weight up the negative and positive aspects of the proposal, as the Commission must when applying the 'no net detriment' test, there was neither strong opposition nor support for the application.

ECONOMIC AND SOCIAL IMPACT

86. Consistent with the approach taken by Justice Bell in *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, the Commission considers it useful to separately analyse the economic and social impacts of an application.

Social Impact

87. The Commission acknowledges that approval of this application will result in the creation of a new gaming venue in an area that has otherwise been isolated from EGMs. It is well accepted that creation of a new gaming venue carries a risk of an increase in problem gaming. This risk is potentially greater where gaming is introduced into a locality that has otherwise been free from gaming.
88. While the Commission accepts that Fyansford is an area that has been free from gaming, residents still have exposure to EGMs. The municipality of Geelong has a large number of EGMs which are widely distributed. The Commission is of the view that the vast majority of residents in Fyansford would travel to Geelong frequently, exposing them to EGMs.
89. The Commission accepts that approval of this application will add to the density of EGMs within the region, however the Commission considers that any increase in the risk of problem gaming arising out of the introduction of EGMs to Fyansford will be minimal as Fyansford's residents are already exposed to gaming. The Commission is satisfied the increase in risk is mitigated to a certain extent by the Applicant's commitment to harm minimisation and responsible service of gaming.
90. Further, the Commission considers there to be a small social benefit arising out of the potential redistribution of no less than 16 EGMs from areas with high levels of disadvantage.



91. The Commission expects the Applicant will work in conjunction with the local gamblers help organisations to minimise the risk of problem gaming occurring within the Premises. The Commission encourages the Applicant to allow gambling counsellors from the local gamblers help organisation to provide on-site support and identification of problem gaming within the Premises.
92. The Commission acknowledges that approval of this venue will result in the loss of a non-gaming hotel in the municipality and considers this a negative social impact of the proposal. However, the Commission considers this negative impact is outweighed by the positive social impact that a redeveloped and considerably improved venue will bring to the local community.
93. The Commission acknowledges that, at sometime in the future, it is likely that the area surrounding the Premises will have a strong retail presence and dense residential population. However, on the material presented, the Commission is not satisfied that this will eventuate in the short to medium term. Accordingly, the Commission is satisfied that the Premises is likely to remain a destination venue for the life of the EGM entitlements purchased by the Applicant.
94. On balance, the Commission considers that the likely social impact of the proposal will be neutral.

Economic Impact

95. The Commission accepts that this proposal will result in an increase in gaming expenditure of approximately \$434,645 in the Geelong municipality. In overall terms, this represents a minor increase in EGM expenditure within the municipality. While the increase in expenditure will bring with it an economic stimulus to the region, this benefit is negated where expenditure derived from problem gaming also increases.
96. The Commission considers the Applicant's commitment to provide \$40,000 annually, indexed to CPI for the life of the EGM entitlements⁷ in financial contributions to local community groups a positive benefit. The Commission is encouraged by the Council and the Applicants preliminary discussions regarding the distribution of the financial contributions. The

⁷ Commencing after the first full year of operation of EGMs in the Premises



Commission is satisfied that the Applicant and the Council will work together to ensure that the financial contributions are distributed to organisations which will derive the most benefit from them.

97. The Commission believes the refurbishment of the venue will be a significant economic and social benefit to the community.
98. The Commission considers an ancillary economic benefit to the municipality of this application will be the increase in employment numbers at the venue, as well as the employment of local sub-contractors to undertake the renovations at the venue. The Commission also considers that approval of a new gaming venue increases competition within the municipality which brings with it a small economic benefit.
99. On balance, the Commission is satisfied that approval of this application will bring with it an economic benefit.

CONCLUSION

100. The no net detriment test in section 3.3.4(1)(c) of the Act requires the Commission to weigh the likely positive economic and social impacts of an application against the likely negative economic and social impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.⁸
101. The Commission has considered the likely economic and social impacts of the proposal and concludes that approval of this application will bring an economic benefit to the municipality and will have a neutral social impact.
102. The Commission accepts there is a risk that approval of this application will result in a small increase in problem gambling expenditure. However, this potential negative is outweighed by the positive economic benefits of this application.

⁸ Romsey (2008) 19 VR 422, 435.



103. Further, the Commission is satisfied as to the other matters in section 3.3.7(1), namely that the Applicant has the authority to make the application, and the Premises will be suitable for the management and operation of gaming machines.
104. The Commission is satisfied that the Premises is, at present, suitable to operate EGMs and will remain of that character in the short to medium term. However, the Commission acknowledges that, considered in the context of future development plans for area there is some probability that in the longer term the risk profile of this venue may increase.
105. The Commission is also satisfied that the Applicant understands and will act on its obligations to take measures to prevent problem gambling.
106. Accordingly, the Commission is satisfied that, in all the circumstances, it is appropriate to exercise its discretion and approve the application.
107. It is a condition of the approval that the approval does not take effect until the Commission has notified the Applicant, in writing, that the Premises has been inspected for the purpose of section 3.3.7(1)(b) and the Commission is satisfied that they are suitable for the management and operation of gaming machines.

Date of Hearing: 9 May 2012
Date of Decision: 16 June 2012
Date of Reasons for Decision: 13 July 2012
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